

## **Exhibit 7**

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2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DIVISION OF NEW YORK

4

5 SMART INSURANCE COMPANY, ) Case No. .

6 Plaintiff, ) 1:15-cv-04384 (KBF)

7      vs.      )

8 BENECARD SERVICES, INC., )

9      Defendant.

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Videotaped Deposition of GERARD MULCAHY

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**Baltimore, Maryland**

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June 29, 2016

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Reported by: Bonnie L. Russo

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<p>1 BY MR. PENDLETON:</p> <p>2 Q. The -- how did you know that Smart 3 had hired Babette Edgar as a consultant?</p> <p>4 A. I believe that they reported it to 5 us in one of their work plans.</p> <p>6 Q. And do you see that Stephanie is 7 writing to John Gardynik about a conversation 8 that Babette had recently had with Trish Axt? 9 Do you see that?</p> <p>10 MR. BARNOWSKI: Object to form.</p> <p>11 THE WITNESS: I do see that.</p> <p>12 BY MR. PENDLETON:</p> <p>13 Q. Okay. And there are a list of 14 things that Stephanie suggests to Mr. Gardynik 15 might help him prepare for his upcoming 16 meeting, correct?</p> <p>17 MR. BARNOWSKI: Object to form.</p> <p>18 MR. YU: Objection.</p> <p>19 MR. BARNOWSKI: Mischaracterizes the 20 document as well.</p> <p>21 MR. YU: I mean the -- objection.</p> <p>22 The witness is not here -- I don't -- I don't</p>	<p>Page 122</p> <p>1 Q. And do you recall that one of the 2 issues was the -- the -- the sufficiency of 3 resources, including full-time clinical 4 pharmacists?</p> <p>5 MR. BARNOWSKI: Object to form.</p> <p>6 THE WITNESS: I do recall that.</p> <p>7 BY MR. PENDLETON:</p> <p>8 Q. And that Smart had represented it 9 was going hire some additional clinical 10 staffing?</p> <p>11 MR. BARNOWSKI: Object to form.</p> <p>12 THE WITNESS: I do recall that.</p> <p>13 BY MR. PENDLETON:</p> <p>14 Q. Did you have any conversations with 15 Smart personnel or ask people that work for you 16 to have conversations with Smart personnel 17 about the necessity to make sure their 18 oversight of the PBM was rigorous in order to 19 ensure compliance with CMS regulations?</p> <p>20 MR. BARNOWSKI: Object to form.</p> <p>21 THE WITNESS: I don't recall that, 22 but that's a -- a basic tenet of the</p>
<p>Page 123</p> <p>1 -- I don't believe it's fair for -- to ask 2 Mr. Mulcahy to opine on what Ms. -- Ms. Bayer 3 meant or didn't mean in writing this e-mail.</p> <p>4 MR. PENDLETON: Well, I -- yeah. I 5 wasn't asking him that. Let me ask another 6 question.</p> <p>7 BY MR. PENDLETON:</p> <p>8 Q. Do you see on No. 6?</p> <p>9 A. I do see No. 6.</p> <p>10 Q. Did you or Trish Axt ever 11 communicate to Smart or its consultants that 12 Smart the insurance company did not understand 13 how rigorous the oversight of its PBM had to be 14 and that it was not fully staffed for it?</p> <p>15 MR. BARNOWSKI: Object to form.</p> <p>16 THE WITNESS: I don't specifically 17 recall.</p> <p>18 BY MR. PENDLETON:</p> <p>19 Q. Okay. Do you recall the work plan 20 request we went over, your formal letter dated 21 May 17, 2013?</p> <p>22 A. I do.</p>	<p>Page 125</p> <p>1 participation in the program.</p> <p>2 BY MR. PENDLETON:</p> <p>3 Q. By early June 2013, do you recall 4 communicating to Smart or any of its personnel 5 or asking people that work for you to do so 6 that CMS had continuing concerns about the 7 plan's compliance with CMS regulations?</p> <p>8 MR. BARNOWSKI: Object to form.</p> <p>9 THE WITNESS: I don't -- I don't 10 recall the specific timing. But we had 11 continued and ongoing concerns about their 12 compliance throughout the entire time they 13 operated from the audit until the novation.</p> <p>14 BY MR. PENDLETON:</p> <p>15 Q. And after the audit, did the same 16 level of concern that you had prior to the 17 audit continue up until the time of the 18 novation?</p> <p>19 MR. BARNOWSKI: Object to form.</p> <p>20 MR. YU: Hold on. I'm going to -- 21 consistent with the approval, I'm going to ask 22 the witness to focus his answer on what he</p>